

ATTACHMENT TO AGENDA ITEM

Ordinary Meeting

17 February 2015

Agenda Item 5.2 Conflict of Interest Policy

Attachment 1 Conflict of Interest Policy 37.POL6..... 119

GREATER SHEPPARTON CITY COUNCIL

Policy Number 37.POL6

Conflict of Interest Policy

Version 1.0

Adopted Day Month Year
Last Reviewed Day Month Year

Business Unit:	Corporate Performance
Responsible Officer:	Manager Corporate Performance
Approved By:	Chief Executive Officer
Next Review:	Within Six Months of a General Election (2016)

PURPOSE

This Conflict of Interest Policy (Policy) has been developed to ensure that all Council employees and representatives act with integrity in their dealings with members of the public and in carrying out their public duties.

Members of the public should be confident that their elected representatives and staff act with the best interest of the community in mind, and that all dealings are done so in a way which is both honest and ethical.

OBJECTIVE

It is essential that Council operates in a manner that is transparent and accountable, and promotes ethical decision making.

In order to achieve effective governance standards, full disclosure of all actual or perceived conflicts of interest are mandatory.

To ensure that there is no bias, or appearance of bias, in decision making, this policy aims to:

- Ensure that all Council employees understand what Conflict of Interest is and why it is relevant to their role
- Make employees aware of their duty to make decisions free of bias and with the highest ethical standard
- Remove any public perception of bias, and as such maintain public confidence
- Keep a record of any declared conflict of interest
- Compliance with the Councillor code of conduct and the staff Code of Conduct Policy 46.POL35
- Compliance with *the Local Government Act 1989 (the Act)*

SCOPE

This policy applies to all representatives of Greater Shepparton City Council (Council). This includes, but is not limited to, Councillors, employees, volunteers, contractors and consultants.

DEFINITIONS

Reference term	Definition
Applicable Gift	One or more gifts with a total value of, or more than, the gift disclosure threshold, received from a person or persons whom have a direct or indirect interest in the matter, and which were received in the 5 years preceding the decision or exercise of power, duty or function (exclusions apply – refer 78C of <i>the Act</i>).
Conflict of Interest	A Conflict of Interest is a situation whereby your ability to make a decision may be influenced by personal interests. This influence creates a bias between a person's private interests and their public duty, involving a lack of impartiality, whether or not financial gain or loss is involved.
Controlling Interest	An ownership interest in a company or other body that has control of the majority of voting stock shares, resulting in the owner of the controlling interest being able to determine any decision and override any other shareholder opinions or votes.

Reference term	Definition
Direct Interest	A person has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances if the person would be directly altered if the matter is decided in a particular way.
Direct Relative	Means the spouse, domestic partner, son, daughter, mother, father, brother or sister of the person.
Disclose	To make information known.
Family Member	Means a spouse or domestic partner of the person, or a son, daughter, mother, father, brother or sister that regularly resides with the person.
Improper direction and improper influence	To use your position with Council to (or seek to) improperly direct or improperly influence a member of Council staff in the exercise of any power or in the performance of any duty or function by that member.
Indirect Interest	A relevant person has an indirect interest in a matter if the relevant person has: <ul style="list-style-type: none"> a) a close association as specified in section 78 of <i>the Act</i> b) an indirect financial interest as specified in 78A of <i>the Act</i> c) a conflicting duty as specified in section 78B of <i>the Act</i> d) received an applicable gift as specified in section 78C of <i>the Act</i> e) become an interested party as specified in section 78D of <i>the Act</i> f) a residential amenity that may be altered as specified in section 78E of <i>the Act</i>.
Matter	Means a matter with which a Council, special committee or a member of Council staff is concerned and that will require: <ul style="list-style-type: none"> a) a power to be exercised, or a duty or function to be performed, or a decision to be made, by the Council or a special committee in respect of the matter b) a power to be exercised, or a duty or function to be performed, or a decision to be made by a member of Council staff in respect of the matter.
Personal Benefit	Any advantage gained by a person or associate by use of confidential Council information.
Relative	Means: <ul style="list-style-type: none"> • a direct relative of the person • a direct relative of a person who is the direct relative of the person.
Relevant Person	Means a person who is a: <ul style="list-style-type: none"> • Councillor • Member of a Special Committee • Member of Council staff

POLICY

1. Application

All relevant persons are bound by an ethical obligation to avoid a conflict of interest. This applies to Councillors, Council officers, contractors and volunteers and forms part of the Councillor Code of Conduct and Council's Code of Conduct Policy 46.POL35.

Should a conflict of interest be identified, those concerned should ensure that they are not in a position where they could not justify to the public their own actions, or in which a reasonable person may become suspicious of improper conduct or preferential treatment.

Whilst influencing factors in your personal life may impact on your professional decisions, this does not automatically mean there is a Conflict of Interest. However, the way in which the potential conflict is dealt with is extremely important so as to ensure that all actions are open and transparent.

2. What Is Conflict Of Interest?

A Conflict of Interest arises where an individual may be seen to be influenced by factors in their private life that could be seen to impact on their ability to make an impartial decision whilst conducting their professional duties. Conflict of Interest can apply where influencing factors are real, or merely perceived.

Conflicts of interest or conflicting personal interests can be either direct or indirect, with the following grounds applying:

- Conflicting Personal Interest (s 79B)
- Direct Interest (s 77B)
- Indirect Interest:
 - Close Association (s 78)
 - Indirect Financial Interest (s 78A)
 - Conflicting Duty (s 78B)
 - Receipt of Applicable Gifts (s 78C)
 - Interested Party (S 78D)
 - Impact on Residential Amenity (S78E)

Factors that may apply for a Conflict of Interest to occur include relationships of both a personal and professional nature. Examples of such relationships include a company which you hold a position with or own shares with, someone you are in a partnership with, or a close family member or friend. Any relationship that may be traced back through these means should be treated as a Conflict of Interest.

Council representatives should at all times act in the best interests of the public in an independent and impartial manner, and must not take into account any personal influences or irrelevant consideration.

Conflict of Interest may occur whether or not financial gain or loss is involved and should be treated in the same manner in either case. As such, Conflicts of Interest may be either 'Direct' or 'Indirect'.

2.1 Direct Interests

A person has a 'direct interest' in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the person would be directly altered if the matter is decided in a particular way.

It would be considered that a person has a direct interest in a matter if:

- there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms if the matter is decided in a particular way;
- the person has, or the person together with a member or members of the person's family have a controlling interest in a company or other body that has a direct interest in the matter.

A person who has a membership in a club or organisation that has a direct interest in a matter:

- does not, by reason of that membership, have a direct interest in the matter under subsection (1); and
- does not have an indirect interest in the matter, by reason of that membership, unless the person has an indirect interest in the matter under section 78A, 78B or 78C.

2.2 Indirect Interest

Indirect Interest by Close Association (Section 78 of the Act)

An indirect interest by close association occurs when a person:

- has a family member with a direct or indirect interest in a matter.
- has a relative with a direct interest in a matter
- has a member of their household with a direct interest in a matter.

Indirect Financial Interest (Section 78A of the Act)

A person has an indirect financial interest in a matter if they are likely to receive a benefit or incur a loss (which can be measured in monetary terms) as a result of a benefit received or loss incurred by another person who has a direct or indirect interest in a matter.

A conflict of interest due to indirect financial interest would exist if:

- the person (or family members of the person) has a beneficial interest in shares of a company or other body that has a direct interest in the matter, except if the combined total value does not exceed \$10,000 and the total value of issued shares of the company or body exceeds \$10 million.
- the person is owed money from another person and that other person has a direct interest in the matter

Indirect Interest due to Conflicting Duties (Section 78B of the Act)

A person has indirect interest in a matter because of a conflicting duty if the person:

- is a manager or a member of a governing body of a company or body that has a direct interest in a matter
- is a partner, consultant, contractor, agent or employee of a person, company or body that has a direct interest in a matter
- is a trustee for a person who has a direct interest in a matter.

A person would also be considered to have an indirect interest if they held a position or role as mentioned above, and in that role, dealt with the matter.

Indirect Interest because of Receipt of an Applicable Gift (Section 78C of the Act)

A person has an indirect interest in a matter if they have received an applicable gift, directly or indirectly from:

- a person who has a direct interest in the matter
- a director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter
- a person who gives the applicable gift to the person on behalf of a person, company or body that has a direct interest in the matter.

Indirect Interest as a Consequence of becoming an Interested Party (Section 78D of the Act)

A person has an indirect interest in a matter if they have become an interested party in the matter by initiating civil or becoming a party to civil proceedings in relation to the matter.

Indirect Interest because of Impact on Residential Amenity (Section 78E of the Act)

A person has an indirect interest in a matter if there is a reasonable likelihood that the residential amenity of the person will be altered if the matter is decided in a particular way.

3. Potential Areas of Conflict

3.1 Influences which may cause a conflict of influence could include circumstances such as, but not limited to:

- Undertaking secondary employment
- Financial and economic interests such as debts or assets
- A family or private business
- Affiliations with for-profit and non-profit organisations, sporting bodies, clubs and associations
- Affiliations to professional, community ethnic, family or religious groups in a personal or professional capacity or relationships to people living in the same household
- Enmity towards or competition with another individual or group
- Significant family or other relationships with clients, contractors or other staff working in the same (or a related) organisation
- Future employment prospects or plans (ie post separation employment)

3.2 In day to day responsibilities at Council, this may affect staff -

- As a member of a tender selection / procurement panel
- As a member of a recruitment/interview panel
- In the determination of development applications
- Considering/deciding grant applications

- If undertaking internal review of Government Information Public Access applications
- General decision making
- Receiving gifts and benefits

4. Disclosing Interests

The attention of Councillors, designated persons, employees and volunteers is drawn to the following criteria to assist them in determining the extent of disclosure required during the meeting in order to satisfy the statutory requirements under Section 79 of *the Act*:

- The details are sufficient to enable other Councillors and the public to appreciate in general terms the connection of the person with the matter under consideration.
- The disclosure does not reveal sensitive information which is not relevant to the matter before the Council.
- The disclosure does not reveal information which may be unnecessarily damaging to the reputation of some person(s) with whom the person disclosing the interest is associated.
- The disclosure will not unnecessarily prejudice a sensitive commercial or legal situation.
- Disclosures of interest made at meetings and subsequent actions will be recorded in the meeting minutes.

4.1 Councillors and Committee Members

- Councillors and Committee Members who believe they have an interest in a matter must declare that interest in any meetings or discussions where that matter is considered.
- Councillors and Committee Members will be required to complete a 'Conflict of Interest Disclosure Form' (see attachment 1) at the time of disclosure and submit this form to the Chief Executive Officer.
- It is highly recommended that a Councillor who has declared an interest excuses themselves from the Council meeting, and remains out of sight:
 - i. at any time during which the matter is being considered or discussed by the Council, or
 - ii. at any time during which the Council is voting on any question in relation to the matter.

4.2 Employees, Contractors, Consultants and Volunteers

- Employees, Contractors, Consultants and Volunteers who believe they have an interest in a matter must declare that interest in any meetings or discussions where the matter is being considered.
- Written notice in the form of a 'Conflict of Interest Disclosure Form' (see attachment 2) must be provided to the Chief Executive Officer.
- The Employee, Contractor, Consultant or Volunteer must determine the appropriate level of any future involvement regarding the matter, although it is highly recommended that they cease any further involvement with the matter.

5. Responsibility for Making a Disclosure

The responsibility for determining potential Conflict of Interest is left to the individual and is not the responsibility of the Mayor or Chief Executive Officer. Individuals should use their best judgment to ascertain whether or not a Conflict of Interest exists. Where unsure, the individual should declare the interest and not participate in any discussion or voting with regard to that matter.

6. Complaints Regarding Failure to Disclose an Interest

Any complaints regarding a staff member, contractor, consultant or volunteers failure to disclose an interest may be directed to the Chief Executive Officer. Should the complaint relate to a Councillors failure to disclose, the matter should be referred to the Local Government Inspectorate.

7. Register of Interests

A Councillor or designated person must complete a Primary Register of Interest Form and lodge it with the Chief Executive Officer, within 3 months commencing in their position.

Thereafter, an Ordinary Register of Interest Form must be lodged every six months, between the periods of 30 June – 9 August and 31 December – 9 February each year.

The following outlines designated persons which are generally required to complete a register of interest:

- i. Councillors
- ii. Committee Members
- iii. The Chief Executive Officer
- iv. Senior Staff of Council
- v. Staff specifically designated by the Chief Executive Officer due to the nature of their functions and level of delegated authority.

Councillors and designated persons will be emailed instructions, a Register of Interest form and a Memo from the Chief Executive Officer at the beginning of each return period. The Governance Officer will be the central point of contact for this process and collect and process all completed returns.

RELATED POLICIES AND DIRECTIVES

- Information to be Made Available to the Public Under the Local Government (General) Regulations 2014 | 37.CEOD7
- Councillor Code of Conduct
- Code of Conduct Policy 46.POL35

RELATED LEGISLATION

- Sections 77, 78, 79 and 80 of *the Local Government Act 1989*
- *Local Law No.2 Processes of Local Government*

REVIEW

The Team Leader Governance is to review this document every four years, within six months after an election, in conjunction with Executive.

Gavin Cator
Chief Executive Officer

Date

ATTACHMENTS

**Attachment 1: Conflict of Interest Disclosure Form – Councillor or
Committee Member**

Attachment 2: Conflict of Interest Disclosure Form – Staff Member

Attachment 3: Primary Register of Interest Form

Attachment 4: Ordinary Register of Interest Form